



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-1113]

RIN 1625-AA00

Safety Zone; Tennessee River, Miles 446.0 to 454.5

AGENCY: Coast Guard, DHS.

ACTION: Final rule

SUMMARY: The Coast Guard is establishing a safety zone for all navigable waters of the Tennessee River, beginning at mile marker 446.0 and ending at mile marker 454.5 during periods of high water flow. This safety zone is necessary to provide safety for mariners transiting on the Tennessee River during periods of high water flow. Entry into this area will be prohibited unless specifically authorized by the Captain of the Port Ohio Valley or designated representative.

DATES: This rule is effective on March 5, 2018.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-1113 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Vera Max, MSD Nashville, Nashville, TN, at 615-736-5421 or at Vera.M.Max@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port Sector Ohio Valley
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Captain of the Port Ohio Valley is establishing a safety zone for all navigable waters of the Tennessee River, from mile 446.0 to 454.5 during periods of high water flow. This safety zone is necessary to provide safety for mariners transiting on the Tennessee River during periods of high water flow. There have been temporary final rules issued in the past establishing a safety zone on the Tennessee River beginning at mile marker 446.0 and ending at mile marker 454.5 when flow rates reached or exceeded 100,000 cubic feet per second at Chickamauga lock and dam. Examples of these previous temporary final rules were published under docket numbers USCG-2013-0025 and USCG-2011-1148. This rulemaking is also necessary to more efficiently effect necessary safety measures during emergent high water events in the future by reducing administrative burden and the amount of paperwork required for multiple individual rulemakings. The Tennessee River beginning at mile marker 446.0 and ending at 454.5 poses a navigational hazard during periods of high water flow. A high water flow determination for this area is established when flow rates reach or exceed 100,000 cubic feet per second at Chickamauga lock and dam on the Tennessee River at mile marker 471.0. The Captain of the Port Sector Ohio Valley (COTP) has determined that

additional safety measures are necessary to protect all mariners during periods of high water flow. On January 13, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety zone; Tennessee River, Mile 446.0 to 454.5 (82 FR 4229). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related high water flow. During the comment period that ended January 30, 2017, we received no comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The COTP has determined that potential hazards are associated with the Tennessee River beginning at mile marker 446.0 and ending at 454.5 posing a navigational hazard during periods of high water flow.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published January 13, 2017. The regulatory text of this rule was changed from the proposed rule in the NPRM to provide a certain effective date.

The COTP is establishing a safety zone for all navigable waters of the Tennessee River beginning at mile marker 446.0 and ending at mile marker 454.5. Vessels or persons will not be able to enter into, depart from, or move within this area without permission from the COTP or designated representative. Persons or vessels requiring entry into or passage through the safety zone will be required to request permission from the COTP, or designated representative. They can be contacted on VHF-FM Channel 13, 16, or through Coast Guard Sector Ohio Valley at 1-800-253-7465. This rule is effective during periods of high water flow when flow rates reach or exceed 100,000 cubic feet per

second at Chickamauga lock and dam. The COTP will inform the public through broadcast notices to mariners during periods of high water flow when the safety zone is established as well as when flow rates fall below 100,000 cubic feet per second and the safety zone is no longer in effect.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Vessel traffic will only be impacted during times of high water which pose dangerous navigational hazards when flow rates exceed 100,000 cubic feet per second at Chickamauga lock and dam. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this rule would not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The

Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local,

or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within the regulated area. It is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.844 to read as follows:

§ 165.844 Safety Zone; Tennessee River, Miles 446.0 to 454.5, Chattanooga, TN.

(a) Location. All navigable waters of the Tennessee River beginning at mile marker 446.0 and ending at mile marker 454.5 at Chattanooga, TN.

(b) Effective date. This section is effective on March 5, 2018.

(c) Periods of enforcement. This section will be enforced whenever flow rates reach or exceed 100,000 cubic feet per second at Chickamauga lock and dam on the Tennessee River at mile marker 471.0. The Captain of the Port Sector Ohio Valley (COTP) or a designated representative will inform the public through broadcast notice to mariners of the enforcement period for the safety zone.

(d) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the COTP or a designated representative.

(2) Persons or vessels desiring entry into or passage through the zone must request permission from the COTP or a designated representative. U. S. Coast Guard

Sector Ohio Valley may be contacted on VHF Channel 13 or 16, or at 1-800-253-7465.

(3) All persons and vessels shall comply with the instructions of the COTP and designated U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: February 21, 2018

M. B. ZAMPERINI,
Captain, U.S. Coast Guard,
Captain of the Port Sector Ohio Valley

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